COURT NO. 3

Criminal Misc. Application No. 47 of 2003.

Afzal Ahmad …Applicant

Vs.

Presiding Judge, Family
Court, Hardwar and others. ...Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Navneet Kaushik, learned counsel for the petitioner and the learned A.G.A

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter in short 'Code') for quashing of the impugned order dated 15.02.2003, annexure-9 passed by Principal Judge, Family Court, Hardwar.

It is evident that application under section 125 of the Code preferred by the wife was decided exparte per judgment and order dated 31.07.2000. The said judgment and order was set aside when husband, the applicant came to know about the exparte judgment. The order to this effect on the application of the applicant was passed on 02.04.2002, whereby the exparte judgment and order was set aside. By virtue of the said exparte judgment and order, the application under section 125 of the Code had to decided on merit after affording an opportunity to the applicant-husband to file written statement. However the learned Principal Judge, Family Court has on 29.01.2003 observed that by virtue of non-payment of the costs as

awarded in the order dated 02.04.2002, the exparte judgment and order dated 31.07.2000 stood revived. Similar view was also later on taken on 15.02.2003, whereby the direction was given to issue recovery warrant for realization of the maintenance allowance. Perusal of order dated 02.04.2003 reveals that the order was not conditional in the sense that the exparte judgment and order dated 31.07.2000 were not to be revived merely on non-payment of the costs. If the costs were not paid, the respondent-wife had legal remedy to recover the same, but by mere non-payment of the costs awarded at that time, the exparte judgment and order do not stand automatically revived.

In view of the above, the learned Principal Judge, Family Court has wrongly held that the above exparte judgment and order stood revived and later on proceeded to issue warrant for realization of arrears of maintenance allowance. For the above reasons, the impugned judgment and order cannot be legally sustained and the same has to be set aside. The application is allowed and impugned judgment and order dated 15.02.2003 is set aside. The case is remanded to the Principal Judge, Family court to decide the matter afresh and pass appropriate judgment and order on the initial petition preferred under section 125 of the Code by the wife, which was initially numbered as case no.259 of 1995 after recording evidence of the parties. With this, the petition is finally disposed of.

27.03.2003./B. **(Irshad Hussain, J.)**